allowed to retain benefits which can be claimed only under it. Recovery being quasi-contractual, the plaintiff is entitled to have restored to him the value he has parted with and for which he has received no return. That is, the plaintiff is entitled to restitution. WOODWARD, LAW OF QUASI CONTRACTS, 199. The value which the plaintiff has lost and the defendant acquired in this case, and the consideration for which has failed, is the use of the plaintiff's land which the defendant has enjoyed. It therefore follows that the measure of recovery should be the rental value of the use of the land, less the $100 paid plaintiff by defendant. In the cases above cited of partial performance of improvements on a building, the measure of recovery allowed in each case was the value of the labor and materials of the plaintiff. In the absence of a contract the measure of recovery for the benefit conferred on defendant at plaintiff's expense is the fair market value of that benefit, without reference to whether defendant was actually enriched by its receipt, or how much he was enriched. *Vickery* v. *Ritchie,* 202 Mass. 810, 88 N. E. 835; *Rogers* v. *Becker-Brainard Milling Machine Co.,* 211 Mass. 559, 98 N. E. 592; *Fabian* v. *Wasatch Orchard Co.,* 41 Utah 404, 125 Pac. 860. If defendant had acquired money from the plaintiff instead of the use of the land the court would not have hesitated to make this sum of money (less any value received by plaintiff) the measure of recovery (*Bibb* v. *Hunter,* 63 Ky., 494); and the fact that the benefit takes another economic form should not affect the question. W. C. M.

SETTING ASIDE A DEFAULT JUDGMENT BECAUSE OF EXCUSABLE NEGLECT BY ATTORNEY.—In the recent case of *Krause* v. *Hobart,* 155 N. W. 279, X had employed an attorney to make defense and the attorney was present when the defaults were called but, being busy at the time, did not hear the case in question called and judgment went by default. On X's motion to vacate the default, the Supreme Court of Iowa held that such facts were a sufficient showing of unavoidable casualty and misfortune under § 4091 of the Code, providing for the vacation of judgments in case of "unavoidable casualty and misfortune."

Notwithstanding the general rule that relief from a final judgment after the end of the term in which it was rendered can be had—in the absence of motion for relief carried over the term as unfinished business,—only by bill for review or other appropriate new action, the authority of the courts over regular judgments has, in several of the states, been extended beyond the term in certain cases specified by statutes or court rules differing too much in their terms to admit of statement of any general rule. It was under such a statute that relief was granted in the principal case.

In the majority of states, notwithstanding these statutes, the courts have steadily refused to set aside or vacate judgments because of the neglect, misconduct, or inadvertence of counsel employed in the case. The general rule is that the neglect of the attorney is the neglect of the client, and that no mistake, inadvertence, or neglect attributable to any attorney can be successfully used as a ground for relief, unless it would have been excusable if

attributable to the client. The acts and omission of the attorney in such a case are those of the client: *Spaulding* v. *Thompson,* 12 Ind. 477, 74 Am. Dec. 221; *Smith* v. *Tunstead,* 56 Cal. 175; *Harper* v. *Mallory,* 4 Nev. 878; *Welch* v. *Challen,* 31 Kas. 696, 3 Pac. 314; *Clark* v. *Ewing,* 93 Ill, 572; *Scott* v. *Wright,* 50 Neb. 849, 70 N. W. 396; *Thomas* v. *Chambers,* 14 Mont. 423, 36 Pac. 814; *Merritt* v. *Putnam,* 7 Minn. 399; *Meyers* v. *Landrum,* 4 Wash. 762, 31 Pac. 33; *Matthis* v. *Cameron,* 62 Mo. 504; *State* v. *Elgin,* 11 Iowa, 216; *Dick* v. *Williams,* 87 Wis. 651, 58 N. W. 1029; *White* v. *White,* 169 Mass. 52; *Butler* v. *Morse,* 66 N. H. 429, 23 Atl. 90; *Bonnifield* v. *Thorp,* 71 Fed. 924; *Athens Leather Mfg. Co.* v. *Myers,* 98 Ga. 396, 25 S. E. 503; *Babcock* v. *Brown,* 25 Vt. 550, 60 Am. Dec. 290; BLACK, JUDGMENTS, § 341, FREEMAN, JUDGMENTS, § 112.

On the other hand, it is held in a few states that the negligence of the attorney is a sufficient ground for setting aside the judgment, provided the client himself was not directly in fault. Thus in *Taylor* v. *Pope,* 106 N. C. 267, 19 Am. St. Rep. 530, it was held that a judgment by default was properly set aside on the ground of excusable neglect, when such judgment was entered through the failure of counsel to enter a plea for defendant, after being employed and left in attendance upon the court. To the same effect, see, *Searle* v. *Christensen,* 5 S. Dak. 650, 60 N. W. 29; *Citizens National Bank* v. *Branden,* 19 N. Dak. 489, 27 L. R. A. (N. S.) 858, and note; *Meacham* v. *Dudley,* 6 Wend. (N. Y.) 514. And see, also, *Peterson* v. *Koch,* 110 Iowa, 19, 80 Am. St. Rep. 260, and note; *Manning* v. *Roanoke, etc., R. R. Co.,* 122 N. C. 824, 28 S. E. 963.

A very much wider discretion in divorce than in other cases was held permissible in California on the ground that the public has an interest in the result of every suit for divorce. "The policy and the letter of the law concur in guarding against collusion and fraud, and it should be the aim of the courts to afford the fullest possible hearing in such matters." *Wadsworth* v. *Wadsworth,* 81 Cal. 182, 22 Pac. 648, 15 Am. St. Rep. 38.

The interests of the individuals as well as of the community demand that there should be a definite end of every litigation; and nothing would be more impolitic than to leave it to the discretion of every court to revise and review and reconsider its judgment without limit. H. B. S.

STATE REGULATION OF FOREIGN CORPORATIONS AS AFFECTED BY THE INTERSTATE COMMERCE CLAUSE.—The decision of the Supreme Court of Michigan in *Lange Medical Company* v. *Brace,* 22 Detroit Legal News 535, 152 N. W. 1026, denied the right of a foreign corporation which had not complied with the state regulatory statute to sue its agent on a contract by which the agent was given the sale of its goods in a certain district within the state. The case presents the difficult problem of marking off the proper bounds of state and federal jurisdiction over matters that are in part interstate in scope and effect, in part intrastate.

The agent entered the employ of the corporation under a written contract giving him authority to sell goods and take orders in territory assigned to